2625.

SUPREME COURT OF THE UNITED STATES.

No. 82.

SELDEN F. WHITE, PL'FF IN ER.,

vs.

THE VERMONT AND MASSACHUSETTS RAILROAD COMPANY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

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UNITED STATES, *ss:*

The President of the United States, to the judges of the circuit court holden in and for the district of Massachusetts, greeting:

[SEAL.]

Because that in the record and process, and also in the rendering of judgment in a suit before you, or some of you, between Selden F. White, of Keene, in the State of New Hampshire, a citizen of said State, plaintiff, and the Vermont and Massachusetts Railroad Company, a corporation established by the laws of the State of Massachusetts, and having an office in said State, and doing business therein, defendants, in a plea of debt, a manifest error has intervened, to the great damage of the said White, as in his complaint has been stated, and as it is just and proper that the error, if any there be, should be corrected in due manner, and that full and speedy justice should be done to the parties aforesaid in this behalf, you are hereby commanded, that, if judgment thereof be given, then, under your seal, you do distinctly and openly send the record and process in the suit aforesaid, with all things concerning them, and this writ, so that you have the same before the Chief Justice and the Associate Justices of the Supreme Court of the United States, on the first Monday of December next, at Washington, being the present seat of the national government, that the record and process aforesaid being inspected, they may cause to be done thereupon what of right ought to be done.

Witness the honorable Roger B. Taney, esquire, Chief Justice of the said Supreme Court, at Washington aforesaid, this twenty-fourth day of October, in the year of our Lord one thousand eight hundred and fifty-seven, and of the independence of the United States the eighty-second.

H. W. FULLER, *Clerk.*

Allowed by—

ASHUR WARE,

Judge of the U. S. for the Dist. of Maine, and now designated for and acting in the Mass. Dist., as provided by law.

UNITED STATES OF AMERICA,
Massachusetts District, ss:

I, Henry W. Fuller, clerk of the circuit court of the U. S. for the first circuit and district of Massachusetts, do make return of this writ, and annex hereto and transmit herewith a true copy of the entire record, and of all proceedings in the suit of Selden F. White, plaintiff, against the Vermont and Massachusetts Railroad

Company, wherein judgment was rendered in said court. I also annex the citation to the adverse party, and certify that a copy of this writ of error was lodged in the clerk's office for such adverse party Oct. 24, 1857.

In testimony whereof, I have hereunto set my hand and the seal of said circuit court, this twenty-eighth day of November, A. D. 1857.

[SEAL.]

H. W. FULLER, *Clerk.*

UNITED STATES OF AMERICA,
Circuit Court of the U. S., Massachusetts District, ss:

To the Vermont and Massachusetts Railroad Company, a corporation established by the laws of the State of Massachusetts, and having an office in Boston, in said State, and doing business therein, greeting:

You are hereby cited and admonished to be and appear before the Chief Justice and Associate Justices of the Supreme Court of the United States, on the first Monday of December next, at ten o'clock a. m., at Washington, being the present seat of the national government, then and there to make answer to a writ of error this day issued by the clerk of the circuit court of the United States, Massachusetts district, wherein you are defendants in error and Selden F. White, of Keene, in the State of New Hampshire, a citizen of said State, is plaintiff, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected, and speedy justice be done to the parties in that behalf.

Witness the Hon. Roger B. Taney, Chief Justice of the Supreme Court of the United States, this twenty-fourth day of October, A. D. eight[een] hundred and fifty-seven.

ASHUR WARE,
Judge of the U. S., and for the time being Judge of said Circuit Court, having been designated therefor, as provided by law, from the Maine District.

UNITED STATES OF AMERICA,
Mass. Dist., ss:

BOSTON, *Oct.* 26, 1857.

Pursuant hereunto I have notified the Vermont and Massachusetts Railroad Company, within named, by giving in hand to John Rogers, esq., the clerk and treasurer of said company, a true and attested copy hereof.

WATSON FREEMAN,
U. S. Marshal.

Ser.,	$2
Copy,	1
Trav.,	06
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UNITED STATES OF AMERICA,
Massachusetts District.

October term, 1857.

At a circuit court of the United States for the first circuit and district of Massachusetts, begun and holden at Boston, within and for the district of Massachusetts, on Thursday, the fifteenth day of October, in the year of our Lord one thousand eight hundred and fifty-seven—

Before the honorable Ashur Ware, district judge, specially designated and appointed from the Maine district, in said circuit, pursuant to acts of Congress passed July 29th, 1850, and April 2, 1852:

SELDEN F. WHITE, OF KEENE, IN THE county of Cheshire, and State of New Hampshire, in the district of New Hampshire, and a citizen in said district of New Hampshire, plaintiff,
versus
THE VERMONT AND MASSACHUSETTS RAILroad Company, a corporation duly established by law in the Commonwealth of Massachusetts, in said district, and having its office and place of business in Boston, in the county of Suffolk, and Commonwealth of Massachusetts, defendants.

In a plea of debt. For that whereas the said defendants, heretofore, to wit, on the second day of July, in the year eighteen hundred and forty-nine, at Boston, in the county of Suffolk, and Commonwealth of Massachusetts, in the district of Massachusetts, made their promissory note in writing, bearing date a certain day and year therein mentioned, to wit, the day and year aforesaid, and then and there delivered the said note to the said plaintiff, by which note they, the said defendants, then and there promised, for value received, to pay to the plaintiff, or order, the sum of one thousand dollars, at the office of the treasurer of said company, in said Boston, on the first day of July, in the year eighteen hundred and fifty-five, and also interest for the same semi-annually, on the first day of January and July of every year after the date of the same; and the plaintiff thereafterwards, on the said first day of July, in the year eighteen hundred and fifty-five, to wit, on the fifteenth day of January, in the year eighteen hundred and fifty-six, at the office of the treasurer of said company, in said Boston, presented the said note, the same being there payable, to the said defendants, for payment of the same and interest thereon, according to its tenor, all of which

the said defendants then and there refused to do, by means whereof the said defendants then and there became liable to pay to said plaintiff the said sum of money in the said promissory note specified, and interest on the same sum, according to the tenor and effect of the said promissory note; and although the said sum of money in the said promissory note specified, and interest thereon, hath been long since due and payable, according to the tenor and effect of said note, yet the said plaintiff in fact saith that the said defendants, although often requested so to do, did not nor would pay the said sum of one thousand dollars in the said note specified, or any part thereof, or interest thereon, to the said plaintiff, in manner aforesaid or otherwise howsoever, but have hitherto wholly neglected and refused so to do, whereby an action hath accrued to the said plaintiff, to demand and have of and from the said defendants the said sum of one thousand dollars in the said note specifiee, with interest thereon, according to the tenor of said note.

And whereas also the said defendants heretofore, to wit, on the second day of July, in the year eighteen hundred and forty-nine, at Boston, in the county of Suffolk, and Commonwealth of Massachusetts, in the district of Massachusetts, made their other promissory note in writing, bearing date a certain day and year therein mentioned, to wit, the day and year aforesaid, and then and there delivered the said note to the said plaintiff, by which note they, the said defendants, then and there promised, for value received, to pay to the plaintiffs, or order, a certain other sum of one thousand dollars, at the office of the treasurer of said company, in said Boston, on the first day of July, in the year eighteen hundred and fifty-five, and also interest for the same semi-annually, on the first day of January and July of every year after the date of the same; and the plaintiff thereafterwards, on the said first day of July, in the year eighteen hundred and fifty-five, to wit, on the fifteenth day of January, in the year eighteen hundred and fifty-six, at the office of the treasurer of said company, in said Boston, presented the said note, the same being then payable, to the said defendants, for payment of the same and interest thereon, according to its tenor, all of which the said defendants then and there refused to do, by means whereof the said defendants then and there became liable to pay to said plaintiff the said sum of money in the said promissory note specified, and interest on the same sum, according to the tenor and effect of the said promissory note; and although the said sum of money in the said promissory note specified, and interest thereon, hath been long since due and payable, according to the tenor and effect of said note, yet the said plaintiff in fact saith that the said defendants, although often requested so to do, did not nor would pay the said sum of one thousand dollars in the said note specified, or any part thereof, or interest thereon, to the said plaintiff, in manner aforesaid or otherwise howsoever, but have hitherto wholly neglected and refused so to do, whereby an action hath accrued to

the said plaintiff, to demand and have of and from the said defendants the said other sum of one thousand dollars in the said note specified, with interest thereon, according to the tenor of said note.

And whereas also the said defendants, heretofore, to wit, on the second day of July, in the year eighteen hundred and forty-nine, at Boston, in the county of Suffolk, and Commonwealth of Massachusetts, in the district of Massachusetts, made their other promissory note in writing, bearing date a certain day and year therein mentioned, to wit, the day and year aforesaid, and then and there delivered the said note to the said plaintiff, by which note they, the said defendants, then and there promised, for value received, to pay to the plaintiff, or order, a certain other sum of one thousand dollars, at the office of the treasurer of said company, in said Boston, on the first day of July, in the year eighteen hundred and fifty-five, and also interest for the same semi-annually, on the first day of January and July of every year after the date of the same; and the plaintiff thereafterwards, on the said first day of July, eighteen hundred and fifty-five, to wit, on the fifteenth day of January, in the year eighteen hundred and fifty-six, at the office of the treasurer of said company, in said Boston, presented the said note, the same being then payable, to the said defendants, for payment of the same, and interest thereon, according to its tenor, all of which the said defendants then and there refused to do, by means whereof the said defendants then and there became liable to pay to said plaintiff the said sum of money in the said promissory note specified, and interest on the same sum, according to the tenor and effect of the said promissory note; and although the said sum of money in the said promissory note specified, and interest thereon, have been long since due and payable, according to the tenor and effect of said promissory note, yet the said plaintiff in fact saith that the said defendants, although often requested so to do, did not nor would pay the said sum of one thousand dollars in the said note specified, or any part thereof, or interest thereon, to the said plaintiff, in manner aforesaid or otherwise howsoever, but have hitherto wholly neglected and refused so to do, whereby an action hath accrued to the said plaintiff, to demand and have of and from the said defendants the said other sum of one thousand dollars in the said note specified, with interest thereon, according to the tenor of said note.

And whereas also the said defendants heretofore, to wit, on the second day of July, in the year eighteen hundred and forty-nine, at Boston, in the county of Suffolk, and Commonwealth of Massachusetts, in the district of Massachusetts, made their other promissory note in writing, bearing date a certain day and year therein mentioned, to wit, the day and year aforesaid, and then and there delivered the said note to the said plaintiff, by which note they, the said defendants, then and there promised, for value received, to pay to the plaintiff, or order, a certain other sum of one thousand

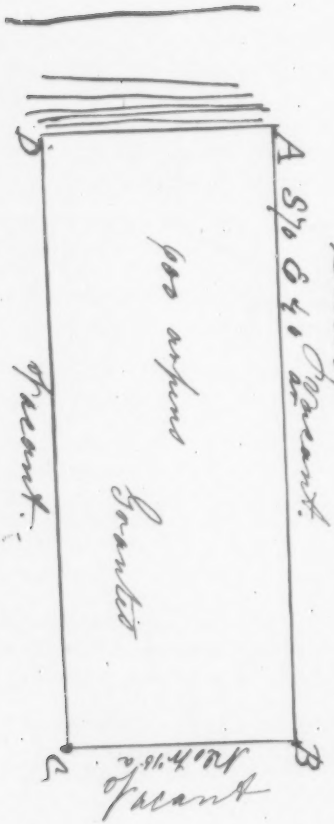
dollars, at the office of the treasurer of said company, in said Boston, on the first day of July, in the year eighteen hundred and fifty-five, and also interest for the same semi-annually, on the first day of January and July of every year after the date of the same; and the plaintiff thereafterwards, on the said first day of July, in the year eighteen hundred and fifty-five, to wit, on the fifteenth day of January, in the year eighteen hundred and fifty-six, at the office of the treasurer of said company, in said Boston, presented the said note, the same being then payable, to the said defendants, for payment of the same, and interest thereon, according to its tenor, all of which the said defendants then and there refused to do, by means whereof the said defendants then and there became liable to pay to said plaintiffs the said sum of money in the said promissory note specified, and interest on the same sum, according to the tenor and effect of said promissory note; and although the said sum of money in the said promissory note specified, and interest thereon, have been long since due and payable, according to the tenor and effect of said note, yet the said plaintiffs in fact saith that the said defendants, although often requested so to do, did not nor would pay the said sum of one thousand dollars in the said note specified, or any part thereof, or interest thereon, to the said plaintiff, in manner aforesaid or otherwise howsoever, but have hitherto wholly neglected and refused so to do, whereby an action hath accrued to the said plaintiff, to demand and have of and from the said defendants the said other sum of one thousand dollars in the said note specified, with interest thereon, according to the tenor of said note.

And whereas also the said defendants heretofore, to wit, on the second day of July, in the year eighteen hundred and forty-nine, at Boston, in the county of Suffolk, and Commonwealth of Massachusetts, in the district of Massachusetts, made their other promissory note in writing, bearing date a certain day and year therein mentioned, to wit, the day and year aforesaid, and then and there delivered the said note to the said plaintiff, by which note they, the said defendants, then and there promised, for value received, to pay to the plaintiff, or order, a certain other sum of five hundred dollars, at the office of the treasurer of said company, in said Boston, on the first day of July, in the year eighteen hundred and fifty-five, and also interest for the same semi-annually, on the first day of January and July of every year after the date of the same; and the plaintiff thereafterwards, on the said first day of July, in the year eighteen hundred and fifty-five, to wit, on the fifteenth day of January, in the year eighteen hundred and fifty-six, at the office of the treasurer of said company, in said Boston, presented the said note, the same being then payable, to the said defendants, for payment of the same, and interest thereon, according to its tenor, all of which the defendants then and there refused to do, by means whereof the said defendants then and there became liable to pay to said plaintiff the said sum of money in the said promis-

sory note specified, and interest on the same sum, according to the tenor and effect of the said promissory note; and although the said sum of money in the said promissory note specified, and interest thereon, hath been long since due and payable according to the tenor and effect of said note, yet the said plaintiff in fact saith that the said defendants, although often requested so to do, did not nor would pay the said sum of five hundred dollars in the said note specified, or any part thereof, or interest thereon, to the said plaintiff, in manner aforesaid or otherwise howsoever, but have hitherto wholly neglected and refused so to do, whereby an action hath accrued to the said plaintiff to demand and have of and from the said defendants the said other sum of five hundred dollars in the said note specified, with interest thereon, according to the tenor of said note.

And whereas also the said defendants heretofore, to wit, on the second day of July, in the year eighteen hundred and forty-nine, at Boston, in the county of Suffolk, and Commonwealth of Massachusetts, in the district of Massachusetts, by their certain writing obligatory, sealed with their seal, and now shown to this court, the date whereof is a certain day and year above named, to wit, the day and year aforesaid, acknowledged themselves to be held and firmly bound unto the said plaintiff in the sum of one thousand dollars, to be paid the said plaintiff, or his order, at the office of the treasurer of said company, in said Boston, on the first day of July, in the year eighteen hundred and fifty-five, and also interest for the same semi-annually, on the first day of January and July of every year after the date of the same; and the plaintiff thereafterwards, on the said first day of July, in the year eighteen hundred and fifty-five, to wit, on the fifteenth day of January, in the year eighteen hundred and fifty-six, at the office of the treasurer of said company, in said Boston, presented the said writing obligatory, the same being then payable, to the said defendants, for payment of the same, and interest thereon, according to its tenor, all of which the said defendants then and there refused to do; yet the said defendants, although often requested so to do, have not as yet paid the said sum of one thousand dollars, or any part thereof, or interest thereon, to the said plaintiff, but have hitherto wholly neglected and refused and still neglect and refuse so to do, to the damage of the said plaintiff of two thousand dollars, and therefore he brings suit.

And whereas also the said defendants heretofore, to wit, on the second day of July, in the year eighteen hundred and forty-nine, at Boston, in the county of Suffolk, and Commonwealth of Massachusetts, in the district of Massachusetts, by their certain other writing obligatory, sealed with their seal, and now shown to this court, the date whereof is a certain day and year above named, to wit, the day and year aforesaid, acknowledged themselves to be held and firmly bound unto the said plaintiff in a certain other sum of one thousand dollars, to be paid the said plaintiff, or his order, at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the office of the treasurer of said company, in said Boston, on the first day of July, in the year eighteen hundred and fifty-five, and also interest for the same semi-annually, on the first day of January and July of every year after the date of the same; and the plaintiff thereafterwards, on the said first day of July, in the year eighteen hundred and fifty-five, to wit, on the fifteenth day of January, in the year eighteen hundred and fifty-six, at the office of the treasurer of said company, in said Boston, presented the said writing obligatory, the same being then payable, to the said defendants, for payment of the same, and interest thereon, according to its tenor, all of which the said defendants then and there refused to do, yet the said defendants, although often requested so to do, have not as yet paid the said sum of one thousand dollars, or any part thereof, or interest thereon, to the said plaintiff, but have hitherto wholly neglected and refused and still neglect and refuse so to do, to the further and other damage of the said plaintiff of two thousand dollars, and therefore he brings his suit.

And whereas also the said defendants heretofore, to wit, on the second day of July, in the year eighteen hundred and forty-nine, at Boston, in the county of Suffolk, and Commonwealth of Massachusetts, in the district of Massachusetts, by their certain other writing obligatory, sealed with their seal, and now shown to this court, the date whereof is a certain day and year above named, to wit, the day and year aforesaid, acknowledged themselves to be held and firmly bound unto the said plaintiff in a certain other sum of one thousand dollars, to be paid to the said plaintiff, or his order, at the office of the treasurer of said company, in said Boston, on the first day of July, in the year eighteen hundred and fifty-five, and also interest for the same semi-annually, on the first day of January and July of every year after the date of the same; and the plaintiff thereafterwards, on the first day of July, in the year eighteen hundred and fifty-five, to wit, on the fifteenth day of January, in the year eighteen hundred and fifty-six, at the office of the treasurer of said company, in said Boston, presented the said writing obligatory, the same being then payable, to the said defendants, for payment of the same, and interest thereon, according to its tenor, all of which the said defendants then and there refused to do; yet the said defendants, although often requested so to do, have not as yet paid the said sum of one thousand dollars, or any part thereof, or interest thereon, to the said plaintiff, but have hitherto wholly neglected and refused and still neglect and refuse so to do, to the further and other damage of the said plaintiff of two thousand dollars, and therefore he brings his suit.

And whereas also the said defendants heretofore, to wit, on the second day of July, in the year eighteen hundred and forty-nine, at Boston, in the county of Suffolk, and Commonwealth of Massachusetts, in the district of Massachusetts, by their certain other writing obligatory, sealed with their seal, and now shown to this

court, the date whereof is a certain day and year above named, to wit, the day and year aforesaid, acknowledged themselves to be held and firmly bound unto the said plaintiff in a certain other sum of five hundred dollars, to be paid the said plaintiff, or his order, at the office of the treasurer of said company, in said Boston, on the first day of July, in the year eighteen hundred and fifty-five, and also interest for the same semi-annually, on the first day of January and July of every year after the date of the same; and the plaintiff thereafterwards, on the said first day of July, in the year eighteen hundred and fifty-five, to wit, on the fifteenth day of January, eighteen hundred and fifty-six, at the office of the treasurer of said company, in said Boston, presented the said writing obligatory, the same being then payable, to the said defendants, for payment of the same, and interest thereon, according to its tenor, all of which the said defendants then and there refused to do; yet the said defendants, although often requested so to do, have not as yet paid the said sum of five hundred dollars, or any part thereof, or interest thereon, to the said plaintiff, but have hitherto wholly neglected and refused and still neglect and refuse so to do, to the further and other damage of the said plaintiff of one thousand dollars, and therefore he brings his suit.

And in a further plea of debt, for that the said defendants, on the day of the purchase of this writ, being indebted to the plaintiff in ten thousand dollars, for goods sold and delivered by the plaintiff to the defendants; and in the same amount for work done and materials for the same provided by the plaintiff for the defendants, at their request; and in the same amount for money lent by the plaintiff to the defendants; and in the same amount for money received by the defendants to the use of the plaintiff; and in the same amount for money paid by the plaintiff for the use of the defendants, at their request; and in the same amount for money due from the defendants to the plaintiff, for interest of money before then due and owing from the defendants to the plaintiff, and by the plaintiff forborne to the defendants, at the defendants' request, for a long time before then elapsed; and in the further sum of ten thousand dollars, according to an account stated, in consideration thereof, promised to pay the same amount to the plaintiff on demand; yet they have not paid the same, to the damage of the said Selden F. White, as he says, the sum of ten thousand dollars.

The writ in this case issued on the thirty-first day of January, A. D. eighteen hundred and fifty-six, and was entered at the May term of this court, A. D. 1856, and was continued thence to the October term in said year, when, by consent of parties, the following amendment was made to said declaration, namely:

And further to answer the plaintiff in a plea of debt, for that whereas the said plaintiff afterwards, to wit, on the day of the purchase of this writ, at Keene aforesaid, had paid, laid out, and expended a certain sum of money, to wit, the sum of eight thousand

dollars lawful money, for the said defendants, and at their special instance and request, and to be paid by the said defendants to the said plaintiff when they, the said defendants, should be thereunto afterwards requested; whereby and by reason of the said last-mentioned sum of money, being and remaining wholly unpaid, an action hath accrued to the said plaintiff, to demand and have of and from the said defendants the said last-mentioned sum of eight thousand dollars, parcel of the said sum above demanded.

And whereas also the said defendants afterwards, to wit, on the day of the purchase of this writ, at Keene aforesaid, had and received a certain other sum of money, to wit, the sum of eight thousand dollars of like lawful money, to and for the use of the said plaintiff, and to be paid by the said defendants to the said plaintiff when they, the said defendants, should be thereunto afterwards requested; whereby and by reason of the said last sum of money being and remaining wholly unpaid, an action hath accrued to the said plaintiff, to demand and have of and from the said defendants the said last-mentioned sum of eight thousand dollars, other parcel of the said sum above demanded.

And whereas also the said defendants afterwards, to wit, on the day of the purchase of this writ, at Keene aforesaid, accounted with the said plaintiff of and concerning divers other sums of money before that time and then due and owing, and in arrear and unpaid, from the said defendants to the said plaintiff, and upon that accounting the said defendants were then and there found to be in arrear and indebted to the said plaintiff in the further sum of eight thousand dollars of like lawful money, to be paid by the said defendants to the said plaintiff when they, the said defendants, should be thereunto afterwards requested; whereby and by reason of the said last-mentioned sum of money being and remaining wholly unpaid, an action hath accrued to the said plaintiff, to demand and have of and from the said defendants the said last-mentioned sum of eight thousand dollars, residue of the said sum above demanded, yet the said defendants, although often requested so to do, have not as yet paid the said sum of eight thousand dollars above demanded, or any part thereof, to the said plaintiff; but they to do this hitherto have wholly refused, and still do refuse, to the damage of the said plaintiff of ten thousand dollars, and therefore he brings his suit.

And thereupon the said corporation, by its attorneys, Hutchins & Wheeler, come, &c., when, &c., and saith that said corporation doth not owe to the plaintiff the sums demanded in the first five counts of the plaintiff's declaration, or any part thereof, in manner and form as the plaintiff hath therein declared; and of this said corporation puts itself upon the country.

VERMONT & MASSACHUSETTS R. R. CO.,
By HUTCHINS & WHEELER,
Their Att'ys.

And the said defendants, by their said attorneys, Hutchins & Wheeler, come, &c., when, &c., and further say that said defendants ought not to be charged with the debts in the last five counts of the plaintiff's declaration mentioned, by virtue of the supposed writings obligatory aforesaid, because said defendants say that the said writings obligatory are not the deeds of said corporation; and of this said corporation puts itself upon the country.

VERMONT & MASSACHUSETTS R. R. CO.,
By HUTCHINS & WHEELER,
Their Att'ys.

And the plaintiff, by their attorneys, do the like.

H. M. & H. G. PARKER,
Plff's Att'y.

And the defendants further file the following notice:

The defendants will require the plaintiff to prove the execution and delivery of the bonds declared upon, and the authority to execute them, and will show that the writings have been materially altered since they were issued, by the insertion of the name of the plaintiff in the body of each of said writings as promisee; that the plaintiff was not the original holder or promisee of any of said writings.

Issue having thus been joined, the following agreed statement of facts was filed in the cause, to wit:

The defendants admit that the signatures upon the instruments declared upon are the signatures of the officers of the corporation, whose names are thereto subscribed; and that they are sealed with the seal of the defendants' corporation; and that such signing and sealing was done by the authority of the corporation regularly given to the persons who executed the same; and that said instruments as issued were issued in regular course, and for a sufficient consideration, by the authorized agents of the corporation; and that neither the principal sums named therein, nor any interest accruing since the principal sums fell due, have been paid in part or in whole; also that payment of said sums was demanded and refused, as set forth in the declaration. Before their maturity, the coupons for interest on the sums named in said instruments have been paid from time to time to the several holders.

It is further agreed that bonds of this description, (secured by the same mortgage,) issued by the defendants' corporation, were sold in the market, and passed from hand to hand constantly by delivery, at a variable price, according to the state of the market.

The plaintiffs admit that said instruments were issued at or about their date to some person, and a citizen of Massachusetts, other than himself, and were then payable to (with the

name of no payee, and without the words "or order" inserted in such blank;) and that said instruments came to the plaintiff for a valuable consideration, through the hands of several intervening holders, in regular course; and that the plaintiff has been the holder and owner of the same since the year 1851; and that he then and since lived in Keene, in New Hampshire; and that before this suit was brought the plaintiff wrote in said blank these words: "Selden F. White, or order," (that name being his own name,) without any knowledge or actual consent on the part of the defendants.

A copy of a mortgage deed made by this defendant corporation, certified by the register of deeds for Franklin county, now in the possession of the plaintiff's counsel, may be used at the trial as the original might have been, and constitute a part of this case.

The above facts are mutually admitted, subject, however, to any objections as to the competency of the facts as matters of evidence upon the issue in this case.

H. M. & H. G. PARKER,
Plaintiff's Att'y.
HUTCHINS & WHEELER,
Att'ys for Deft.

And subsequently the following amendment thereof was filed:

The plaintiff's declaration consists of the common counts in debt and of ten special counts. Said special counts are in two sets, and are all founded upon said bonds; in one set they are declared upon as "the writing obligatory, sealed with their seal," &c., &c., and in the other set they are declared upon as promissory notes. A copy of one of each set, to wit, the first and sixth counts, is to make a part of the agreed statement of facts. A copy of the defendants' pleas is also to be annexed. Any decision of the court, upon the first and sixth counts will apply to all the special counts.

HUTCHINS & WHEELER,
For Defts.
H. M. & H. G. PARKER,
For Plffs.

The copy of the mortgage deed, referred to in the foregoing statement of facts, and used at the hearing, is as follows:

Copy of Mortgage Deed.

Whereas at a meeting of the stockholders of the Vermont and Massachusetts Railroad Company, a corporation duly established by law within the Commonwealth of Massachusetts, held at Boston, in said Commonwealth, on the twenty-ninth day of June last past, after due and legal notice thereof, the said stockholders adopted the following vote, to wit:

Voted, That the directors be and they hereby are authorized to execute a mortgage of the road, with all its franchises, to trustees, selected by them, for the purpose of securing the bonds of the corporation, to be issued by the board, for the following objects, viz:

First, To pay the floating debt of the corporation.

Second, To finish the Greenfield branch.

Third, To cover the amount of the outstanding bonds, provided the holders thereof shall surrender the same within one year from the date of the mortgage, and receive new bonds for the same.

And whereas the Brattleboro' and Fitchburg Railroad Company, a corporation duly established by law, within the State of Vermont, to continue said Vermont and Massachusetts Railroad from the line dividing the States, to the town of Brattleboro', at a meeting thereof, duly notified and held at said Brattleboro', on the fifth day of July current, adopted the following vote, to wit:

Voted, That the Brattleboro' and Fitchburg Railroad Company will unite with the Vermont and Massachusetts Railroad Company, in mortgaging the road, and franchises thereof, to secure the bonds of the Vermont and Massachusetts Railroad Company, issued, and to be issued, for the payment of the floating debt, and to finish the Greenfield branch, in consideration that the funds of the last-named company were used to construct the road from the line of the State of Massachusetts to Brattleboro' aforesaid, and

Voted, That the president of this company be empowered to unite with the directors of the Vermont and Massachusetts Railroad Company in mortgaging the road for the purposes aforesaid.

And whereas afterwards, on the tenth day of July current, the said Vermont and Massachusetts Railroad Company, by its board of directors, legally assembled, did appoint Robert G. Shaw, of Boston, John Davis, of Worcester, and Jabez C. Howe, of Boston, esquires, as trustees, under and by virtue of said vote, and did also resolve that a mortgage in pursuance thereof should be made to said trustees, for eleven hundred thousand dollars, that sum being deemed necessary for the purposes specified, or at least a sum not exceeding that amount.

Now, therefore, this indenture of mortgage, of two parts, entered into this eleventh day of July, A. D. 1849, by and between the said Vermont and Massachusetts Railroad Company, acting by the board of directors hereinafter named, of the first part, and the said Robert G. Shaw, John Davis, and Jabez C. Howe, trustees of the bond-holders, under the above-recited vote of the said corporation, of the other part, witnesseth:

That the said Vermont and Massachusetts Railroad Company, for and in consideration of the premises, and of one dollar to them paid by the said Shaw, Davis, and Howe, in behalf of said bond-holders, the receipt whereof they, the said party of the first part, hereby acknowledge, and do hereby give, grant, bargain, sell, and convey to the said Shaw, Davis, and Howe, trustees as aforesaid,

and to the survivor or survivors of them and each of them, and to their successors to be hereafter appointed in case vacancies should occur, in the manner hereinafter provided, forever, the railroad of said party of the first part, called the Vermont and Massachusetts Railroad, as the same is located and improved by said company, extending from Fitchburg, in the county of Worcester, to the State line in Vernon, in the county of Franklin, and thence in the State of Vermont to the terminus in the town of Brattleboro', and also the Greenfield branch, so called, extending from the town of Montague, where it commences, to its terminus in Greenfield, in said county of Franklin, including not only the entire roads as located, but the stations, engine-houses, shops, wood-houses, and other appendages, with all the lands thereto belonging, and intended for the use and accommodation of the said roads, and in any way essential to the same, including also the entire superstructure of the said roads, as they are and as they may be if repaired or improved, together with all the running machinery, to wit: locomotives, cars of all descriptions, tools and implements of all kinds, and whatever else is used and employed in carrying on and working said roads, with all improvements made upon such property, and all additions made thereto, by adding new locomotives, cars, and other things, including all provisions made for repairs and improvements in any branch of the service:

Excluding, nevertheless, from this conveyance such lands owned by the said party of the first part as are not embraced by the above description:

To have and to hold the aforegranted premises with all the rights of property, privileges, and appurtenances thereto belonging, and all rights and privileges secured to the said party of the first part by the acts of the Legislature which have been and may be passed in their behalf, as well as all rights and privileges to said party of the first part, in any other way appertaining or belonging, including the right of working said road, and receiving compensation for transportation, to the said Shaw, Davis, and Howe, their survivors and successors, upon the trusts and for the uses herein set forth, and subject to the conditions herein made, to wit:

First, The said party of the first part may, pursuant to the above-recited vote, issue the bonds of the Vermont and Massachusetts Railroad Company to an amount not exceeding eleven hundred thousand dollars, executed by their president and treasurer, having upon their face the fact stated that they are secured by this mortgage; and also the fact certified, by one of said trustees at least, that each bond so issued is part of the eleven hundred thousand authorized as above by said vote of the stockholders.

Second, The said bonds shall be payable on the first day of July, 1855, eighteen hundred and fifty-five, and shall bear an annual interest at the rate of six per cent., payable on the first days of July and January in each year, at the office of the treasurer

of said party of the first part, in the city of Boston, where the bonds also shall be payable when due.

Third, The party of the first part may retain possession of and manage said roads, and the business thereof, so long as they punctually comply with and fulfil the stipulations contained in said bonds, and do not permit said property to be wasted or its value impaired through neglect or mismanagement.

Now, therefore, the condition of this obligation is such, that if the said Vermont and Massachusetts Railroad Company shall well and truly pay, or cause to be paid, the accruing interest upon said bonds, according to the tenor thereof, and shall also pay the principal thereof, pursuant to their promise, when the same falls due, then this obligation shall be void, otherwise it shall be in full force.

It is, nevertheless, further agreed, by and between the parties hereto, and their respective successors, that upon the non-observance of the conditions herein stipulated, the said trustees and their successors may, if they see fit, take possession of the whole property and franchise herein conveyed, and shall thereupon have full power and authority, as trustees as aforesaid, to manage and control the same, and after providing for the expenses incident to working the roads, and to keeping them in a condition suitable for business, to apply the net proceeds to the purposes of the trust.

And it is further agreed, by and between the said parties, that if at any time there shall be a breach of condition by the non-payment of interest when due, or the non-payment of the principal when due, for the space of six months after the money so falls due, and two-thirds in amount of the bond-holders shall request it, in writing, under their hands, the property aforesaid may, upon any such neglect, be sold at public auction by said trustees, or the survivor or survivors of them and their successors; and for that purpose the party of the first part hereby empowers them, by an authority irrevocable, both to sell and convey, by deed or deeds, under their hands and seals, to the purchasers: Provided, after such neglect by non-payment, and such request from the bond-holders, they shall give three months' notice of any such intended sale, by publishing an advertisement thereof in one newspaper in each of the counties of Suffolk, Worcester, and Franklin, in Massachusetts, and Windham, in Vermont, stating therein the time and place of sale; but any such sale may be defeated by the party of the first part, by paying, at any time before it takes place, whatever is then due to the bond-holders, and such further sums as are then chargeable upon this trust, from managing the road, or any other just cause: and the said property may, upon the above terms and conditions, be offered for sale as often as a breach of condition for non-payment occurs, until a sale actually is made; upon which event, the said trustees and their successors, after defraying all expenses and charges upon the trust, shall, if the

net proceeds of the sale be sufficient, pay up the bonds, with the interest which has accrued thereon, whether the bonds are due or not; and in case such proceeds are inadequate for that purpose, they shall be distributed pro rata among the bond-holders; the said trustees, however, being always accountable for any balance remaining in their hands after defraying all charges and expenses, and paying up said bonds.

And it is further understood and agreed between the parties hereto, that as the machinery, including the motive power, cars, and articles of that description, may, through age and service, or from other causes, become unsuitable or unprofitable to employ, in any such case, it may be disposed of by replacing it by articles of equal value, it being always understood that all such property is to be kept in good repair.

And it is further agreed by and between said parties, that whenever a vacancy in this board of trustees shall occur, the remaining members shall immediately proceed and make an appointment from among the bond-holders to supply such vacancy, whether it happens by death, inability to discharge the duty, or by resignation; and when the acting members have certified upon this deed, under their hands, such appointment, the person so appointed shall then become a trustee, with the same powers which he would have had if he had been a party to this instrument.

And finally, the said Robert G. Shaw, John Davis, and Jabez C. Howe, trustees as aforesaid, do for themselves and their successors, do covenant with the said Vermont and Massachusetts Railroad Company, and their successors, that they will conduct the affairs and duties of said trust according to their best skill and judgment; and in case their duty requires them to take possession of said property, and to work said roads, that their doings shall be open to the reasonable inspection and examination of the said corporation, and that they will make a report of the state and condition of said roads, with an account of the business and income thereof, as often as the by-laws now require it of the directors. But it is understood and agreed that the said trustees are not liable in any contingency for the acts of each other, but that each is solely liable for his personal acts or negligence.

In testimony of all which, we, the said Vermont and Massachusetts Railroad Company, by Alvah Crocker, Jabez C. Howe, Daniel Bartlett, jr., Columbus Tyler, Thomas Whittemore, Lyman Nichols, Joseph Goodhue, and Henry Chapman, the board of directors, have hereunto set our corporate name and seal, and we, the Brattleboro' and Fitchburg Railroad Company, by Joseph Goodhue, the president of said company, have hereunto set our corporate name and seal; and also we, Robert G. Shaw, John Davis, and Jabez C. Howe, trustees as aforesaid, have severally hereunto set our hands and seals.

2634

Done in duplicate this eleventh day of July, in the year eighteen hundred and forty-nine.

VERMONT & MASS. RAILROAD COMPANY,
[AND COMPANY SEAL.]
By ALVAH CROCKER,
JABEZ C. HOWE,
DANIEL BARTLETT, JR.,
COLUMBUS TYLER,
THOS. WHITTEMORE,
LYMAN NICHOLS,
JOSEPH GOODHUE,
H. CHAPMAN,
Board of Directors of said Vermont & Mass. R. R. Co.

BRATTLEBORO' & FITCHBURG
RAILROAD COMPANY,
By JOSEPH GOODHUE, [& SEAL.]
President of said Co.

ROBERT G. SHAW, [& SEAL.]
JOHN DAVIS, [& SEAL.]
JABEZ C. HOWE, [& SEAL.]

Signed, sealed, and delivered in presence of us—
JOHN ROGERS,
HARRINGTON HATCH.

COMMONWEALTH OF MASSACHUSETTS,
Suffolk, ss: July 13th, 1849.

Then appeared John Davis and Jabez C. Howe, and severally acknowledged the above instrument to be their free act and deed.
Before me,

A. H. FISKE,
Justice of the Peace.

COMMONWEALTH OF MASSACHUSETTS,
Suffolk, ss: July 13, 1849.

Then appeared Jabez C. Howe, Daniel Bartlett, jr., Columbus Tyler, Thomas Wittemore, Lyman Nichols, and Henry Chapman, and acknowledged the above instrument to be the free act and deed of the Vermont and Massachusetts Railroad corporation.
Before me,

A. H. FISKE,
Justice of the Peace.

SUFFOLK, *ss: July* 16, 1849.

Then appeared Alvah Crocker and Joseph Goodhue, and acknowledged the above instrument to be the free act and deed of the Vermont and Massachusetts Railroad Company; and at the

same time Joseph Goodhue acknowledged the said instrument to be the free act and deed of the Brattleboro' and Fitchburg Railroad Company.

Before me,

A. H. FISKE,
Justice of the Peace.

FRANKLIN, *ss:*

Rec'd July 23d, 1849. Recorded in book 155, page 237, and compared.

By ALMON BRAINARD, *Reg'r.*

FRANKLIN, *ss:* *March* 4, 1856.

I hereby certify that the foregoing is a true copy of the record as found in the Franklin Co. registry.

HUMPHREY STEVENS,
Register of Deeds.

The papers annexed hereto are copies of the original instruments declared on, containing the words "Selden F. White, or order," written in, as set forth in the agreed statement of facts, and of which they are to be taken to be a part.

HUTCHINS & WHEELER,
Counsel for Defts.
H. M. & H. G. PARKER,
Counsel for Plaintiffs.

VERMONT AND MASSACHUSETTS RAILROAD COMPANY.

No.		Amount.
No. 1434.	*Mortgage Bond.*	$1,000.

The Vermont and Massachusetts Railroad Company, for value received, hereby promise to pay to Selden F. White, or order, the sum of one thousand dollars, at the office of the treasurer, in the city of Boston, on the first day of July, which will be in the year one thousand eight hundred and fifty-five; and also interest for the same semi-annually, on the first day of January and July in each and every year after the date hereof, upon the surrender of the corresponding warrant.

In witness whereof, and pursuant to a vote of the stockholders of said company, passed on the 29th day of June, 1849, the president and treasurer have hereunto set their hands and the seal of said corporation, this second day of July, 1849.

[SEAL OF V. & M. R. R. CO.]

(Signed) JOHN ROGERS, *Treasurer.*
THOS. WHITTEMORE,
President.

I hereby certify that this bond is secured by mortgage, dated July 11th, 1849.

(Signed,) JABEZ C. HOWE,
One of the Trustees.

Secured by a mortgage of the road for the sum of $1,100,000, made to Robert G. Shaw, of Boston, John Davis, of Worcester, and Jabez C. Howe, of Boston, in trust for the benefit of the bondholders.

VERMONT AND MASSACHUSETTS RAILROAD COMPANY.

No.		Amount.
No. 1435.	*Mortgage Bond.*	$1,000.

The Vermont and Massachusetts Railroad Company, for value received, hereby promise to pay to Selden F. White, or order, the sum of one thousand dollars, at the office of the treasurer, in the city of Boston, on the first day of July, which will be in the year one thousand eight hundred and fifty-five; and also interest for the same semi-annually, on the first day of January and July in each and every year after the date hereof, upon the surrender of the corresponding warrant.

In witness whereof, and pursuant to a vote of the stockholders of said company, passed on the 29th day of June, 1849, the president and treasurer have hereunto set their hands and the seal of said corporation, this second day of July, 1849.

[SEAL OF V. & M. R. R. CO.]

(Signed,) JOHN ROGERS, *Treasurer.*
THOS. WHITTEMORE, *President.*

I hereby certify that this bond is secured by mortgage, dated July 11th, 1849.

(Signed) JABEZ C. HOWE,
One of the Trustees.

Secured by a mortgage of the road for the sum of $1,100,000, made to Robert G. Shaw, of Boston, John Davis, of Worcester, and Jabez C. Howe, of Boston, in trust for the benefit of the bondholders.

VERMONT AND MASSACHUSETTS RAILROAD COMPANY.

No.		Amount.
No. 1436.	*Mortgage Bond.*	$1,000.

The Vermont and Massachusetts Railroad Company, for value received, hereby promise to pay to Selden F. White, or order, the sum of one thousand dollars, at the office of the treasurer, in the city of Boston, on the first day of July, which will be in the year

one thousand eight hundred and fifty-five ; and also interest for the same semi-annually, on the first day of January and July in each and every year after date hereof, upon the surrender of the corresponding warrant.

In witness whereof, and pursuant to a vote of the stockholders of said company, passed on the 29th day of June, 1849, the president and treasurer have hereunto set their hands and the seal of said corporation, this second day of July, 1849.

[SEAL OF V. & M. R. R. CO.]

(Signed,) JOHN ROGERS, *Treasurer.*
THOS. WHITTEMORE, *President.*

I hereby certify that this bond is secured by mortgage, dated July 11th, 1849.

(Signed,) JABEZ C. HOWE,
One of the Trustees.

Secured by a mortgage of the road for the sum of $1,100,000, made to Robert G. Shaw, of Boston, John Davis, of Worcester, and Jabez C. Howe, of Boston, in trust for the benefit of the bondholders.

VERMONT AND MASSACHUSETTS RAILROAD COMPANY.

No.		Amount.
No. 1440.	*Mortgage Bond.*	$1,000.

The Vermont and Massachusetts Railroad Company, for value received, hereby promise to pay to Selden F. White, or order, the sum of one thousand dollars, at the office of the treasurer, in the city of Boston, on the first day of July, which will be in the year one thousand eight hundred and fifty-five ; and also interest for the same semi-annually, on the first day of January and July in each and every year after the date hereof, upon the surrender of the corresponding warrant.

In witness whereof, and pursuant to a vote of the stockholders of said company, passed on the 29th day of June, 1849, the president and treasurer have hereunto set their hands and the seal of said corporation, this second day of July, 1849.

[SEAL OF V. & M. R. R. CO.]

(Signed,) JOHN ROGERS, *Treasurer.*
THOS. WHITTEMORE, *President.*

I hereby certify that this bond is secured by mortgage, dated July 11th, 1849,

(Signed,) JABEZ C. HOWE,
One of the Trustees.

Secured by a mortgage of the road for the sum of $1,100,000,

made to Robert G. Shaw, of Boston, John Davis, of Worcester, and Jabez C. Howe, of Boston, in trust for the benefit of the bondholders.

VERMONT AND MASSACHUSETTS RAILROAD COMPANY.

No.		Amount.
No. 1061.	*Mortgage Bond.*	$500.

The Vermont and Massachusetts Railroad Company, for value received, hereby promise to pay to Selden F. White, or order, the sum of five hundred dollars, at the office of the treasurer, in the city of Boston, on the first day of July, which will be in the year one thousand eight hundred and fifty-five; and also interest for the same semi-annually, on the first day of January and July in each and every year after the date hereof, upon the surrender of the corresponding warrant.

In witness whereof, and pursuant to a vote of the stockholders of said company, passed on the 29th day of June, 1849, the president and treasurer have hereunto set their hands and the seal of said corporation, this second day of July, 1849.

[SEAL OF V. & M. R. R. CO.]

(Signed,) JOHN ROGERS, *Treasurer.*
THOS. WHITTEMORE, *President.*

I hereby certify that this bond is secured by mortgage, dated July 11th, 1849.

(Signed,) JABEZ C. HOWE,
One of the Trustees.

Secured by a mortgage of the road for the sum of $1,100,000, made to Robert G. Shaw, of Boston, John Davis, of Worcester, and Jabez C. Howe, of Boston, in trust for the benefit of the bondholders.

This cause came on to be heard at the last term of this court upon the pleadings and statements aforesaid, and was argued by counsel; and thereupon, after mature deliberation thereon had, the court were of opinion that this action ought to be dismissed for want of jurisdiction; but on motion of the plaintiff, the same was further continued by agreement of parties to this present term; and now it is considered and ordered by the court that the said action be and the same is hereby dismissed for want of jurisdiction.

UNITED STATES OF AMERICA,
Massachusetts District, ss:

I, Henry W. Fuller, clerk of the circuit court of the United States for the first circuit, Massachusetts district, do hereby certify that the foregoing is a true copy of the record and of all proceedings in